

Peter E. Heuser, OSB No. 811281

Email: pheuser@schwabe.com

Kimvi T. To, OSB No. 115865

Email: kto@schwabe.com

Schwabe, Williamson & Wyatt, P.C.

Pacwest Center

1211 SW 5th Ave., Suite 1900

Portland, OR 97204

Telephone 503.222.9981

Fax 503.796.2900

Of Attorneys for Plaintiff, Bioject Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORLAND DIVISION

BIOJECT INC., an Oregon corporation,

Case No. 3:12-cv-1325

Plaintiff,

vs.

**WEST PHARMACEUTICAL
SERVICES, INC.**, a Pennsylvania
corporation,

**COMPLAINT FOR PATENT
INFRINGEMENT**

Defendant.

DEMAND FOR JURY TRIAL

Plaintiff Bioject Inc. (“Bioject”) brings this Complaint for patent infringement against Defendant West Pharmaceutical Services, Inc. (“West”) and states as follows:

I.

NATURE OF LAWSUIT

1. This is a patent infringement lawsuit brought under the patent laws of the United

States, including 35 U.S.C. §§ 271, 281, 283-285.

II.

THE PARTIES

2. Plaintiff Bioject is an Oregon corporation, with its principal place of business located at 7180 SW Sandburg Street, Suite 100, Tigard, Oregon 97223.
3. Defendant West is a Pennsylvania corporation, with its principal place of business located at 101 Gordon Drive, Lionville, Pennsylvania 19341.

III.

JURISDICTION AND VENUE

4. This action arises under United States patent laws, namely 35 U.S.C. §§ 271 *et seq.*
5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.
6. This Court has general jurisdiction over West because, on information and belief, West maintains continuous and systematic contacts with the State of Oregon, including but not limited to selling or offering for sale products to distributors, hospitals, and/or customers in this district.
7. Venue is proper in this Court under 28 U.S.C. §1331(b), §1331(c), and/or 1400(b).

IV.

BACKGROUND

8. Bioject was founded in 1985 to develop needle-free injection systems to improve the comfort and safety of routine injections. Bioject has since developed a broad technology platform for delivering many different types of medications and vaccines to the subcutaneous and intramuscular depths. Bioject's long-standing history of innovation has made it one of the world's leading companies for medical drug delivery systems and components.

9. On March 8, 1994, Bioject filed a patent application that was subsequently fully

examined by the U.S. Patent and Trademark Office (“PTO”). On November 14, 1995, the PTO duly and legally issued U.S. Patent No. 5,466,220 (“the ‘220 Patent”), entitled “DRUG VIAL MIXING AND TRANSFER DEVICE,” based on the patent application filing. Since that date, all maintenance fees have been paid. Bioject has always held all rights, title, and interest in the ‘220 Patent. A copy of the ‘220 Patent is attached as “Exhibit A.”

10. As stated in the abstract, the ‘220 Patent is generally directed to a drug vial mixing and transfer device having a piercing connector or syringe attached to the end of one or more ports with interconnecting fluid passageways. The piercing connector is used to support and penetrate standard glass drug vials filled with powder or lyophilized drugs or liquid diluent, while the syringe is used to transfer liquid diluent and drug solutions between the vials and the syringe advantageously within a sealed system.

11. Defendant West is engaged in the business of making, using, and selling drug vial mixing and transfer devices.

12. On information and belief, including statements made on West’s online website, www.westpharma.com, West products, including at least the Needleless Transfer Device (“Accused Device”), practice the technology claimed in the ‘220 Patent. West provides product information regarding the Accused Device on its website. A copy of this product information is attached as “Exhibit B.”

13. West had notice of the ‘220 Patent at least as early as December 22, 2000, when the ’220 Patent was cited as prior art during the prosecution of Patent Application No. 09/633,056, now issued as Patent No. 6,379,340 to Medimop Medical Projects Lts., a subsidiary of West. Specifically, the ‘220 Patent was cited by the PTO Examiner as the principal piece of prior art that completely anticipated all of the then-pending claims of the patent application. A copy of the relevant pages of the prosecution history and Medimop’s patent are attached as “Exhibit C.”

V.

INFRINGEMENT OF THE '220 PATENT

14. Bioject realleges and incorporates by reference the allegations set forth in the preceding paragraphs.

15. Upon information and belief, West has been and is directly infringing, literally and/or under the doctrine of equivalents, at least claims 1 and 10 of the '220 Patent under 35 U.S.C. § 271(a), by making, using, selling, and/or offering for sale the Accused Device.

16. As of at least December 22, 2000, West's infringement of the '220 Patent has been willful and West continues to sell products that directly infringe the '220 Patent.

17. West's infringement of the '220 Patent has injured and will continue to injure Bioject unless and until the Court enjoins further infringement of the '220 Patent.

VI.

JURY DEMAND

18. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Bioject requests a trial by jury of all issues so triable.

VII.

PRAYER FOR RELIEF

WHEREFORE, Bioject asks this Court to enter judgment against West granting the following relief:

A. A judgment declaring that West has willfully infringed one or more claims of the '220 Patent, literally and/or under the doctrine of equivalents;

B. A judgment, order, or award of damages adequate to compensate Bioject for West's infringement of the '220 Patent, together with prejudgment interest;

C. A preliminary and/or permanent injunction prohibiting West and its subsidiaries, affiliates, parents, successors, assigns, officers, employees, attorneys, agents, and all other persons acting with West or on its behalf from infringing the '220 Patent;

D. An accounting to determine information relevant to establishing the extent of West's infringement and amount of Bioject' damages;

E. An award of costs and attorney fees pursuant to 35 U.S.C. § 285, to the extent the Court finds this case to be exceptional;

F. With respect to the '220 Patent, an order trebling the damage award under 35 U.S.C. § 284, together with prejudgment interest; and

G. Such other and further relief as this Court may deem proper and just.

Dated this 20th day of July, 2012.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Peter E. Heuser
Peter E. Heuser, OSB No. 811281
Kimvi T. To, OSB No. 115865
Telephone 503.222.9981
Of Attorneys for Bioject Inc.